

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS K. MILLS,

Plaintiff,

v.

ZACHERY JONES, et al.

Defendants.

No. 1:23-cv-01214-JLT-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL,
WITHOUT PREJUDICE

(ECF No. 28)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed December 14, 2023.

he does not have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the Court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether

1 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
2 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
3 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

4 In the present case, the Court does not find the required exceptional circumstances. Even
5 if it assumed that plaintiff is not well versed in the law and that he has made serious allegations
6 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
7 similar cases almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to
8 his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
9 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most
10 actions require development of further facts during litigation and a pro se litigant will seldom be
11 in a position to investigate easily the facts necessary to support the case.”) Circumstances
12 common to most prisoners, such as lack of legal education and limited law library access, do not
13 establish exceptional circumstances that would warrant a request for voluntary assistance of
14 counsel. In the present case, the court does not find the required exceptional circumstances. The
15 test is whether exception circumstances exist and here, they do not. In particular, the record in
16 this case supports a finding that Plaintiff has adequately litigated this action to date. Indeed, he
17 has filed several motions including, a motion to compel, request for default, and motion for
18 summary judgment. Further, the fact that the Court has found that Plaintiff has stated a
19 cognizable claim, at the pleading stage, does not demonstrate that he is likely to proceed on the
20 merits of the claims. Accordingly, Plaintiff’s motion for appointment of counsel is denied,
21 without prejudice.

22 IT IS SO ORDERED.

23 Dated: **December 15, 2023**

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25 UNITED STATES MAGISTRATE JUDGE
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